

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

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JAMES HULCE on behalf of himself and others  
similarly situated,

Plaintiff,

Case No.: 2020-CV-775

v.

LUSTRE-CAL CORPORATION,

Defendant.

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**JOINT STATUS REPORT REGARDING DISCOVERY INTO THE NATURE AND  
FUNCTION OF PLAINTIFF’S FAX MACHINE**

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Plaintiff James Hulce (“Plaintiff”) and Defendant Lustre-Cal Corporation (“Defendant”) (collectively the “Parties”), through their undersigned counsel, respectfully submit this Joint Status Report regarding discovery into nature and function Plaintiff’s fax machine pursuant to the Court’s March 30, 2022 order (ECF No. 36).

1. On August 24, 2020, Defendant moved to dismiss Plaintiff’s Class Action Complaint under Rule 12(b)(1) of the Federal Rules of Civil Procedure in part based on the Federal Communications Commissions’ rulings in *In the Matter of Amerifactors Financial Group, LLC Petition for Expedited Declaratory Ruling Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 Junk Fax Protection Act of 2005*, 34 FCC Rcd 11950, CG Docket Nos. 02-278, 05-338, 2019 WL 6712128 (Dec. 9, 2019) and *In the Matter of Joseph T. Ryerson & Son, Inc. Petition for Declaratory Ruling Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 35 FCC Rcd 9474, CG Docket Nos. 02-278, 05338, 2020 WL 5362216 (Sept. 4, 2020). ECF No. 12.

2. On May 20, 2021, the Court issued an order in which it deferred ruling on Defendant's motion to dismiss under Rule 12(b)(1) until it could determine the applicability of *Amerifactors* and *Ryerson* to this case. ECF No. 22. It then ordered the Parties to file supplemental briefs on whether *Amerifactors* and *Ryerson* apply to this case and/or whether they are binding on the Court. *Id.* The Parties did so. On March 30, 2022, the Court issued an order in which it noted it was still deferring ruling on the applicability of *Amerifactors* and *Ryerson* to this case. ECF No. 36. It then ordered the Parties to conduct discovery into the "nature and function" of Plaintiff's fax system to aid the Court into whether *Amerifactors* and *Ryerson* apply to this case. *Id.* In particular, the Court stated as follows:

The limited discovery into the type of fax machine and the manner in which the unsolicited fax was received should demonstrate one of two things: either the fax was received on a telephone fax machine—meaning the Amerifactors and Ryerson rulings do not apply—or it was received in a manner similar to an email—in which the Amerifactors and Ryerson rulings could be relevant, if final and binding. *Id.* at 5.

3. The Court initially gave the Parties until June 24, 2022 to complete discovery into the "nature and function" of Plaintiff's fax system. ECF No. 36 at 8. However, the Parties asked for a short extension until July 8, 2022 to complete such discovery—which the Court granted.

4. The Parties completed discovery into the "nature and function" of Plaintiff's fax system by their July 8, 2022 deadline.

5. The parties are now in now in position to submit supplemental briefing to the Court regarding the "nature and function" of Plaintiff's fax system—should the Court need such supplemental briefing to rule on the applicability of *Amerifactors* and *Ryerson* to this case

Respectfully submitted,  
PARONICH LAW, P.C.

/s/ Anthony Paronich

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### **CERTIFICATE OF SERVICE**

I, Joseph D. Kern, an attorney, certify that on September 12, 2022, I caused to be served a copy of the foregoing on the below individuals by: depositing same in the U.S. Mail box at 151 North Franklin Street, Chicago, Illinois 60606, prior to 5:00 p.m., postage prepaid; messenger delivery; UPS; facsimile transmitted from (312) 704-3001; email; or electronically via the Case Management/Electronic Case Filing system ("ECF"), as indicated below.

- ☒ ECF
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- ☐ UPS
- ☐ U.S. Mail
- ☐ E-Mail
- ☐ Messenger Delivery

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